

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY C. ROSENAU,

Defendant.

CASE NO. CR06-157MJP

ORDER DENYING MOTION TO
INVOKE RULE OF SPECIALTY

This matter comes before the Court on Defendant's motion to invoke the rule of specialty (Dkt. No. 33). Having reviewed the motion, the Government's consolidated response (Dkt. No. 36), and all supporting papers, the Court DENIES Defendant's request to invoke the rule of specialty.

The doctrine of specialty prohibits the requesting nation from prosecuting the extradited individual for any offense other than that for which the surrendering state agreed to extradite. United States v. VanCauwenberghe, 827 F.2d 424, 428 (9th Cir. 1987), cert.denied, 484 U.S. 1042 (1988). The Court looks to the language of the applicable treaty to determine the protection an extradited person is afforded.

1 The treaty with Canada, pursuant to which Defendant was extradited, provides that
2 persons “shall not be detained, tried or punished in the territory of the requesting State for an
3 offense other than that for which extradition has been granted.” Treaty on Extradition between
4 the United States of America and Canada, March 22, 1976, U.S.-Can., art. 12, 27 U.S.T. 983.
5 The test of when a trial is for a separate offense is not “some technical refinement of local law,
6 but whether the extraditing country would consider the offense actually tried ‘separate.’” United
7 States v. Andonian, 29 F.3d 1432, 1436 (9th Cir. 1994) (citations omitted). The government is
8 not required, under the auspices of specialty, to try a defendant on the same evidence that was
9 presented to the surrendering state, so long as it satisfies the requirement that trial is for the same
10 offenses arising out of the same allegations of fact. Id. at 1438. The Court finds that Defendant
11 has made no showing that the Government attempts to prosecute Defendant for anything other
12 than the three charges for which he was extradited. The Court DENIES Defendant’s motion to
13 invoke the rule of specialty.

14 The clerk is ordered to provide copies of this order to all counsel.

15 Dated this 6th day of October, 2011.

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21 Marsha J. Pechman
22 United States District Judge
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